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# TRANSMITTAL FORM

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|---|---|
| Application Number | 10/613,168 |
| Filing Date | July 3, 2003 |
| First Named Inventor | Neil L. Marko |
| Art Unit | 3671 |
| Examiner Name | Alexandr K. Pechhold |
| Total Number of Pages in This Submission: 9 | Attorney Docket Number: 2124A-000021 |

**ENCLOSURES** ***(check all that apply)***

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment / Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☒ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
  - ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s) ____
- ☐ After Allowance Communication to Technology Center (TC)
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☒ Other Enclosure(s) *(please identify below)*:

  **Supplemental Response to the Office Action Dated February 4, 2004; Acknowledgement Postcard**

**Remarks** The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

| | | | |
|---|---|---|---|
| Firm or Individual name | Harness, Dickey & Pierce, P.L.C. | Attorney Name Joseph R. Papp | Reg. No. 20115 |
| Signature | | | |
| Date | May 26, 2004 | | |

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EV 406 075 382 US

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

| | |
|---|---|
| Application No.: | 10/613,167 |
| Filing Date: | July 3, 2003 |
| Applicant: | Neil L. Marko |
| Group Art Unit: | 3671 |
| Examiner: | Alexandra K. Pechhold |
| Title: | Variable Ramp Assemblies and System Therefor |
| Attorney Docket: | 2124A-000021 |

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**SUPPLEMENTAL RESPONSE**
**TO THE OFFICE ACTION DATED FEBRUARY 4, 2004**

Madam:

This response is supplemental to the prior response filed on May 4, 2004 to the Office Action dated February 4, 2004.

As noted in the prior response, the prior art relied upon in the rejections of the ramp claim do not relate to "a ramp system for forming ramp assemblies --- for providing aerial lift to users of skates, skateboards, bicycles and the like..".

Thus Frederiksen, the primary reference, discloses a special type ramp structure for wheelchairs, primarily to facilitate movement over "door thresholds". As such these ramp structures inherently would be of a limited, minimal height and for a special

restricted use in a field unrelated to recreational ramps constructed for providing "aerial lift" for "rideable wheeled recreational products including skates, skateboards and bicycles".

The secondary patent is to Felzer and is for a "Vehicle Lift" to provide "drive-on type lift" for vehicles such as "an automobile or truck".

A number of the claims were rejected on 35 USC 102(b) as being anticipated by Frederiksen. The law clearly provides that rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. In addition, the reference must be enabling and describe the applicant's claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention. The Frederiksen reference clearly does not disclose a ramp system for providing aerial lift for recreational products and certainly does not disclose each and every limitation of the claims rejected as being anticipated.

Clearly then the noted claims directed to ramps for providing aerial lift and with other defined elements cannot be rejected on 35 USC 102(b) as being anticipated by Frederiksen. This is not supported in the relevant law.

A number of the claims were rejected on the basis of obviousness under 35 USC 103(a). Here some of the claims were rejected on the Frederiksen reference combined with the Felzer patent and others on the combination of Frederiksen and the Seitz patent.

It is clear that such rejection under 35 USC 103(a) is contrary to the prevailing law on obviousness. In this regard the CAFC in the recent opinion, *In re Lee*, 61 USPQ 2d, p. 1430, stated at page 1433:

"The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.2d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the *Graham* factors).

"The factual inquiry whether to combine references must be thorough and searching." *Id.* It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. *See, e.g., Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) ("showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."); *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (" 'teachings of references can be combined *only* if there is some suggestion or incentive to do so.' ") (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).

Clearly, then the rejection of the noted claims on obviousness under 35 U.S.C. 103(a) is not supported by the prevailing law. Also any attempt to consider the applicability of the issue of obviousness to any of the claims, heretofor, rejected on anticipation would not be supported by the controlling law.

Thus in view of the above and the comments made in the prior response filed on May 4, 2004, it is submitted that all of the claims are in condition for allowance and favorable reconsideration is respectfully requested.

It is noted that the Office Action of February 4, 2004 made no reference to the

Supplemental Information Disclosure Statements filed on December 4, 2003, January 8, 2004 and January 15, 2004 all before the Office Action of February 4, 2004. Also note the subsequently filed additional IDS, filed on February 16, 2004 and March 1, 2004 and this day on May 26, 2004.

Again if the Examiner has any further questions on this matter, the Examiner is requested to contact counsel for applicants to expedite any further consideration of this matter.

Respectfully submitted,

By: _____
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Dated: May 26, 2004

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